

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

3  
4       United States of America,

5                                       Plaintiff,

6       vs.                                       Criminal Action No. 3:21-cr-49-2

7       Diana Toebe,

8                                       Defendant.

9  
10               Proceedings had in the Plea Hearing in the  
11       above-styled action on September 27, 2022, before the Honorable  
12       Robert W. Trumble, Magistrate Judge, at Martinsburg,  
13       West Virginia.

14  
15                                       APPEARANCES

16       On behalf of the United States of America:

17               Jarod J. Douglas  
18               Assistant United States Attorney  
19               United States Attorney's Office  
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22               Jessica Lieber Smolar  
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              Pittsburgh, Pennsylvania 15219

26       The defendant was present in person.

27       Proceedings reported by means of digital recording; transcript  
28       produced by computer-aided transcription.

                                  Kate A. Slayden, CCR, RPR  
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APPEARANCES (Continued)

On behalf of the United States of America:

S. Derek Shugert, Esq.  
United States Department of Justice  
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On behalf of the defendant:

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1 (Digitally-recorded proceedings in open court.)

2 (September 27, 2022, 9:04 A.M.)

3 - - -

4 THE COURT: Thank you. Please be seated. All right.  
5 Good morning, everyone.

6 Chad, would you call the case for me, please.

7 THE CLERK: Certainly. This is the case of the  
8 United States of America versus Diana Toebbe, Criminal Number  
9 3:21-cr-49, defendant 2.

10 The government is represented by counsel, Jarod Douglas,  
11 Jessica Smoler, and Derek Shugert. The defendant is present in  
12 person and by counsel, Barry Beck and Jessica Carmichael.

13 Are the parties ready to proceed?

14 MR. DOUGLAS: The government is ready, Your Honor.

15 MR. BECK: Mrs. Toebbe is ready, Your Honor.

16 THE COURT: All right. Good morning, everyone.  
17 We're scheduled for a binding plea to an indictment this  
18 morning. And as an initial matter, there may be people who are  
19 monitoring this proceeding by electronic means, and I would  
20 caution anybody that is or will be monitoring by electronic  
21 means to mute their microphones and not to cause any disruption  
22 during the course of this hearing.

23 So with that in mind, who will be speaking? Well, I'll be  
24 directing questions to both of you, but who will be primarily  
25 speaking on behalf of the defense? Mr. Beck, you?

1 MR. BECK: I will, Your Honor.

2 THE COURT: All right. Very well.

3 Mr. Beck, it's my understanding that Ms. Toebbe desires to  
4 plead guilty to the charge contained in Count 1 of the original  
5 indictment; is that correct, sir?

6 MR. BECK: It is, Your Honor.

7 THE COURT: All right. Thank you.

8 Ms. Toebbe, would you please stand, raise your right hand,  
9 and be sworn by the clerk.

10 (The defendant was sworn in.)

11 THE DEFENDANT: I do.

12 THE CLERK: Thank you.

13 THE COURT: Thank you. Please be seated.

14 Ms. Toebbe, do you understand that you are under oath, and  
15 if you answer any of my questions falsely, your answers may  
16 later be used against you in another prosecution for perjury or  
17 for making a false statement?

18 THE DEFENDANT: I do.

19 THE COURT: Do you understand that if you lie, it may  
20 result in a higher sentence for you?

21 THE DEFENDANT: I do.

22 THE COURT: Now, during the course of this hearing,  
23 I'm going to be asking you several questions. At any point,  
24 you should feel free to ask questions, ask for an explanation  
25 if you do not understand my question, or ask me to pause the

1 proceedings so that you may confer with your counsel. Do you  
2 understand?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Would you state your full name for the  
5 record, please.

6 THE DEFENDANT: Diana Smay Toebbe.

7 THE COURT: Ms. Toebbe, how old are you?

8 THE DEFENDANT: I'm forty-six.

9 THE COURT: And how much education have you had?

10 THE DEFENDANT: I have a Ph.D.

11 THE COURT: So you can read, write, and understand  
12 English?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you recently been under the care of  
15 a doctor, psychiatrist, or other medical professional for any  
16 serious physical or mental illness, including treatment for an  
17 addiction to drugs or alcohol?

18 THE DEFENDANT: Yes.

19 THE COURT: Does any of the treatment that you've  
20 received affect your ability to communicate with your  
21 attorneys?

22 THE DEFENDANT: No.

23 THE COURT: Does it affect your ability to understand  
24 the charges that are pending against you?

25 THE DEFENDANT: No.

1           THE COURT: Did it affect your ability to participate  
2 in your defense of this matter?

3           THE DEFENDANT: No.

4           THE COURT: Did it affect your ability to understand  
5 the terms and conditions of the plea agreement that was offered  
6 by the government?

7           THE DEFENDANT: No.

8           THE COURT: Are you currently using any form of a  
9 controlled substance or any medication or alcohol that might  
10 affect your ability to understand this proceeding?

11          THE DEFENDANT: No.

12          THE COURT: Mr. Beck, Ms. Carmichael, do either of  
13 you have any reason to question the competence of your client,  
14 Ms. Toebbe?

15          MR. BECK: I do not, Your Honor.

16          MS. CARMICHAEL: No, Your Honor.

17          THE COURT: Ms. Toebbe, are you here today to enter a  
18 guilty plea as part of a written plea agreement?

19          THE DEFENDANT: I am.

20          THE COURT: Ms. Toebbe, I find that you are competent  
21 and capable of entering an informed plea.

22          Ms. Toebbe, my name is Robert Trumble. I'm the United  
23 States Magistrate Judge. You are charged with a felony  
24 offense. You have the right to have this plea taken by an  
25 Article III judge, sometimes called a district judge. Only you

1 can give up that right, and I can only hear your plea if you  
2 agree to it by signing a waiver.

3 Now, I have on my bench a waiver that appears to bear your  
4 signature. So first of all, did you, in fact, sign this  
5 waiver?

6 THE DEFENDANT: I did.

7 THE COURT: Did you discuss it with your attorneys  
8 before you signed it?

9 THE DEFENDANT: I did.

10 THE COURT: Do you understand the purpose for the  
11 waiver is to allow me to hear your plea today; is that correct?

12 THE DEFENDANT: I do.

13 THE COURT: Did anyone force or pressure you into  
14 signing the waiver?

15 THE DEFENDANT: No, sir.

16 THE COURT: Mr. Beck, Ms. Carmichael, do either of  
17 you -- is it your understanding that your client agrees to the  
18 waiver?

19 MR. BECK: Yes, Your Honor.

20 THE COURT: All right. Thank you. I find that the  
21 waiver has been properly executed and direct that it be filed.

22 Now, Ms. Toebbe, do you understand that you have the right  
23 to be represented by counsel at every stage of these  
24 proceedings, including your sentencing, and if you could not  
25 afford counsel, you have a right to have counsel appointed in

1 your behalf?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Beck, do you or any member of your  
4 office represent anyone, including codefendants, who might be  
5 interested in the outcome of this matter?

6 MR. BECK: No, Your Honor.

7 THE COURT: Ms. Carmichael, do you or any member of  
8 your office or firm represent anyone who might -- including  
9 codefendants, who might be interested in the outcome of this  
10 matter?

11 MS. CARMICHAEL: No, Your Honor.

12 THE COURT: Thank you.

13 All right. Ms. Toebbe, let me ask you some questions about  
14 the representation that you've received. Do you believe that  
15 you've had adequate time to discuss your case fully with your  
16 counsel?

17 THE DEFENDANT: Yes.

18 THE COURT: Have they been able to answer your  
19 questions about how best to proceed in this case?

20 THE DEFENDANT: Yes.

21 THE COURT: Is there anything your lawyers have not  
22 done which you have asked them to do?

23 THE DEFENDANT: No.

24 THE COURT: Are you completely satisfied with the  
25 legal advice that you've received from Mr. Beck and



1 Ms. Carmichael?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Carmichael and Mr. Beck, during the  
4 time that you represented Ms. Toebbe, has she been cooperative  
5 with you?

6 MR. BECK: She has, Your Honor.

7 THE COURT: Have you had adequate time to discover  
8 the government's case?

9 MR. BECK: Yes, Your Honor.

10 THE COURT: Have you had adequate time to consider  
11 the possible defenses to the charge?

12 MR. BECK: Yes, Your Honor.

13 THE COURT: Do either of you know any viable defense  
14 to the charge contained in Count 1 of the original indictment?

15 MR. BECK: We do not, Your Honor.

16 THE COURT: Have you had adequate time to consider  
17 the possible sentences that may be imposed upon your client?

18 MR. BECK: Yes, Your Honor.

19 THE COURT: Have you discussed all of the issues I  
20 just addressed with you with your client, Ms. Toebbe?

21 MR. BECK: We have, Your Honor.

22 THE COURT: All right. Thank you.

23 All right. We have a plea agreement in this case.

24 Mr. Douglas, will you be speaking on behalf of the  
25 government?

1 MR. DOUGLAS: Yes, Your Honor.

2 THE COURT: All right. Would you summarize the  
3 contents of the plea agreement for the Court.

4 MR. DOUGLAS: Yes, Your Honor.

5 Your Honor, I have here the original version of the plea  
6 agreement for the Court's consideration. It's dated September  
7 19, 2022. It's in letter form. It's 8 pages and 20 paragraphs  
8 in length.

9 In the first paragraph, the defendant agrees to plead  
10 guilty to Count 1 of the indictment.

11 Count 2 informs her of the maximum penalties of that plea  
12 of guilty, including the maximum term of imprisonment, the  
13 maximum term of fine as well as supervised release.

14 That paragraph also covers her requirement to pay the  
15 special assessment -- the mandatory special assessment and  
16 reflects her understanding that she might be required to pay  
17 the costs of any incarceration.

18 Paragraph 3, Your Honor, of course as we know, we're here  
19 on the second plea agreement. This is one paragraph that has  
20 changed. Whereas previously the binding term was not more than  
21 36 months of imprisonment, it is now a sentence of imprisonment  
22 of not more than the low end of the applicable guidelines  
23 range. Which that paragraph goes on to explain the parties'  
24 reference to that term "low end" as meaning the lowest number  
25 of months of imprisonment available in the applicable

1 guidelines range. Of course, the Court still determines the  
2 supervised release and the fine if any.

3 That paragraph continues to reflect the parties'  
4 understanding that if the Court does not accept that binding  
5 term, then this defendant has the right to withdraw her plea of  
6 guilty.

7 Paragraph 4 remains the same. It's the stipulation with  
8 regard to the base offense level of 37 since all that was  
9 involved here was confidential classified information. There  
10 was no top secret information involved. Only confidential  
11 classified information.

12 Paragraph 5 is new. That is a paragraph in which the  
13 government has agreed to move the Court for a downward  
14 departure under Section 5K1.1 of the guidelines. Specifically,  
15 a request for a three-level reduction which is conditioned upon  
16 the defendant fulfilling her obligations under the plea  
17 agreement.

18 Paragraph 6, Your Honor, remains the same. It's the  
19 stipulation as to the facts supporting this plea agreement as  
20 well as the factual basis for the plea. And, again, the  
21 parties have agreed that in lieu of calling a witness later  
22 when the Court asks for a factual basis, the government will  
23 simply proffer this factual stipulation. But it generally,  
24 again, because it's already been outlined before in court, I'll  
25 kind of keep it high level. It generally discusses when she

1 joined the conspiracy during the charged period, what the  
2 conspiracy's object was, what her contribution to the  
3 conspiracy was. Then it goes into specific sort of overt acts  
4 in support of the conspiracy that occurred on June 26, 2021, in  
5 this district; July 31, 2021, outside of this district in  
6 Pennsylvania; August 28, 2021 -- onto the next page, page 3 --  
7 which occurred in Virginia; and then October 9, 2021, the last  
8 dead drop that was involved in this case and the arrest which  
9 also occurred in this district.

10 Paragraph 7 is the *Booker* waiver. That remains the same.  
11 To the extent there are any facts that need to be determined,  
12 it would be determined by the sentencing judge by a  
13 preponderance of the evidence.

14 Paragraph 8 reflects the defendant's agreement to be  
15 completely forthright and truthful of all questions made of  
16 her. So it's a cooperation paragraph. That goes on to have  
17 other specific instances of cooperation that she's agreed to,  
18 including helping to access the electronic devices, helping to  
19 locate and retrieve the \$100,000 that was paid by the FBI, and  
20 helping to locate all the classified information.

21 Now, she has fulfilled those obligations I can report. Of  
22 course, we'd still keep this in the plea agreement in case  
23 there's any other cooperation that is needed in the future, but  
24 she has aided in the return of the \$100,000 specifically.

25 Paragraph 9 includes the limited use immunity that goes

1 along with that cooperation that she'll be required to provide  
2 under paragraph 8.

3 Paragraph 10 reflects her understanding and agreement that  
4 she shall not have contact with any foreign government or  
5 agents thereof except with the express written permission of  
6 the FBI unless such contact is solely for the purpose of  
7 obtaining a visa for foreign travel, entering and departing a  
8 foreign country through customs control, or otherwise related  
9 to lawful international travel. She shall not accept any  
10 benefit from any foreign agent.

11 Moving on to page 5, paragraph 11. That paragraph reflects  
12 the defendant's knowingly and voluntarily giving up any right  
13 to additional discovery in this case; and if there are any  
14 pending requests, which I don't believe there are, those are  
15 waived as well.

16 Paragraph 12 reflects the defendant's understanding and  
17 agreement that no later than 30 days following the sentencing  
18 hearing, she will, through her attorneys, return to the United  
19 States all discovery provided by the United States in this case  
20 with the exception of any classified materials that this office  
21 has given the defendant and for which we've provided express  
22 written permission to retain. That has other provisions  
23 related to that topic ending in paragraph 12.

24 Paragraph 13 states that without limitation to the  
25 government's right to forfeit all property subject to

1 forfeitures permitted by law, she does forfeit and abandon  
2 right, title, and interest to some specific items. Of course  
3 that's the papers, the digital media, and the electronic  
4 devices seized from her residence, her vehicles, and  
5 Mr. Toebbe's Naval Reactors offices in October of 2021.

6 Paragraph 14 reflects the government agreement to advise  
7 the Court of the defendant's forthrightness and truthfulness or  
8 failure to be forthright and truthful and asks the Court to  
9 give it such weight as it deems appropriate. That paragraph  
10 also contains the government's agreement to move to dismiss the  
11 remaining counts of the indictment against this defendant at  
12 the sentencing hearing.

13 Paragraph 15 contains nonbinding sentencing recommendations  
14 despite the fact that this is a binding plea agreement.  
15 Specifically, that if the probation office finds she accepted  
16 responsibility, which it has, and it should continue to do so,  
17 that we will concur in that two-level reduction.

18 In addition, a third-level reduction for timely acceptance  
19 of responsibility, which was conditioned upon the timely  
20 execution of this plea agreement on or before September 23,  
21 2022, and I can report that it was so timely executed.

22 Moving on to page 6, paragraph 16 covers when the plea  
23 agreement is effective which is of course as soon as it is  
24 signed. It covers things that she could do that might cause  
25 the release of the government's obligations under the plea

1 agreement, none of which has occurred, and sort of covers those  
2 scenarios, however.

3 Paragraph 17 contains the appellate and habeas corpus  
4 waivers in this matter, all of which are based upon the Court  
5 sentencing the defendant pursuant to paragraph 3. In other  
6 words, pursuant to the binding term. That paragraph is  
7 separated into three subparagraphs.

8 Subparagraph A concerns the appeal of the conviction,  
9 paragraph B -- subparagraph B concerns the direct appeal of the  
10 sentence, and paragraph C concerns the habeas corpus or  
11 collateral attack of both the conviction and sentence all of  
12 which she waives, again, if the Court sentences her pursuant to  
13 paragraph 3.

14 In paragraph 18, the government reserves the right to  
15 provide the probation office with all relevant information with  
16 regard to the background of this defendant.

17 Paragraph 19 concerns the -- any monetary penalties that  
18 might be paid. That paragraph remains the same as we  
19 previously summarized.

20 Finally, paragraph 20 simply emphasizes that the above 19  
21 paragraphs just outlined that's the entire agreement between  
22 the parties. There are no other agreements.

23 The plea agreement was in typeface font addressed to  
24 Jessica Carmichael. Mr. Beck, who went with the plea agreement  
25 to the jail, crossed out Jessica Carmichael and wrote in his

1 name, and it appears to be signed by him and the defendant on  
2 every page. The government attorneys have signed on the final  
3 page on behalf of the government.

4 THE COURT: All right. Thank you, Mr. Douglas.  
5 Would you please tender the plea agreement to Mr. Beck, please.

6 MR. DOUGLAS: So tendered.

7 THE COURT: Thank you.

8 Mr. Beck, did Mr. Douglas provide a fair summary of the  
9 entire agreement?

10 MR. BECK: He did, Your Honor.

11 THE COURT: Thank you.

12 Ms. Toebbe, do you understand what this agreement does?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand what this agreement  
15 requires of you?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you have any questions about your plea  
18 agreement?

19 THE DEFENDANT: I do not.

20 THE COURT: I'd like you to take a look at the plea  
21 agreement that was just handed to your attorney. First of all,  
22 tell me how many pages are in the plea agreement.

23 THE DEFENDANT: There are eight.

24 THE COURT: And at the bottom of each page, there's a  
25 signature line that appears to bear your signature.



1 Ms. Toebe, is that your signature at the bottom of each  
2 page?

3 THE DEFENDANT: It is.

4 THE COURT: Ms. Toebe, were each of the paragraphs  
5 of the plea agreement discussed with you prior to your reaching  
6 an agreement with the government?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, do you understand that this is a  
9 binding plea, meaning that you have agreed to be sentenced to a  
10 sentence of imprisonment of not more than the low end  
11 applicable guideline range, and the parties have referenced the  
12 low end as meaning the lowest number of months of imprisonment  
13 available in the applicable guideline range?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that because this is a  
16 binding plea agreement, the sentencing court may accept the  
17 plea agreement, reject it, or defer a decision until it has  
18 reviewed your presentence report; and if the Court does not  
19 accept the plea, you will have the right to withdraw your plea  
20 of guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that under our concept  
23 known as relevant conduct, the Court may take into account any  
24 conduct, circumstances, and injuries relevant to the crime to  
25 which you are pleading guilty?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that under the terms of  
3 the plea agreement, you and the government have stipulated that  
4 the total relevant conduct of the defendant with regard to the  
5 original indictment is a base offense level of 37 pursuant to  
6 Section 2M3.1(a)(2) because the offense involved the  
7 communication of restricted data that was classified at the  
8 confidential level?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that the Court is not  
11 bound by this stipulation, and if the Court does not accept  
12 this stipulation, you don't have the right to withdraw your  
13 guilty plea?

14 THE DEFENDANT: Yes.

15 THE COURT: As part of your plea agreement, do you  
16 understand that you have stipulated to the facts as set forth  
17 in paragraph 6 of your plea agreement --

18 And, Mr. Beck, would you show that to her. It's paragraph  
19 6 that begins on page 2 and continues to the middle of page 3.

20 MR. BECK: She has it in front of her, Your Honor.

21 THE COURT: Ms. Toebbe, is that the stipulation to  
22 which you've agreed to?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that under the terms of  
25 the plea agreement, prior to sentencing and pursuant to Section

1 5K1.1 of the guidelines, the United States will move to depart  
2 downward from the otherwise applicable guideline range; more  
3 specifically, the United States will move the Court for a  
4 three-level reduction pursuant to Section 5K1.1 of the  
5 guidelines which is -- which agreement in this regard is  
6 explicitly conditioned upon you fulfilling your obligations  
7 under the plea agreement?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that the terms of the  
10 agreement -- that under the terms of the plea agreement, you  
11 and the government have agreed that you will provide access to  
12 and consent to search all electronic devices and accounts  
13 owned, possessed, and/or controlled by you and files contained  
14 therein; electronic accounts include but are not limited to all  
15 Proton mail accounts?

16 THE DEFENDANT: Yes.

17 THE COURT: You also understand that pursuant to the  
18 terms of the plea agreement, you and the government have agreed  
19 that you will assist federal officials with locating all  
20 classified information and restricted data in any form  
21 possessed and/or controlled by you or contained in the  
22 premises, including electronic devices and accounts possessed  
23 and/or controlled by you?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that under the terms of

1 the plea agreement, you and the government have agreed that you  
2 shall not knowingly have any contact with any foreign  
3 government or agents thereof except with the express written  
4 permission of the FBI unless such contact is solely for the  
5 purposes of obtaining a visa or for foreign travel, entering or  
6 departing a foreign country through customs control, or  
7 otherwise related to lawful international travel; that you  
8 shall not seek or knowingly accept personally or through  
9 another person or entity any benefit from any foreign  
10 government or agent thereof; and that such -- should such  
11 benefit be received by you or some person or entity on your  
12 behalf, you will assign such benefit to the United States?

13 THE DEFENDANT: I understand.

14 THE COURT: Do you understand that under the terms of  
15 the plea agreement, you and the government have agreed that if  
16 the defendant withdraws from this agreement, commits or  
17 attempts to commit any additional federal, state, or local  
18 crimes, or intentionally gives materially false, incomplete, or  
19 misleading testimony or information, or otherwise violates any  
20 provision of the agreement, the United States will be released  
21 from its obligation under the agreement; the defendant,  
22 however, may not withdraw the guilty plea entered pursuant to  
23 this agreement; that the defendant will be subject to  
24 prosecution for any federal criminal violation, including but  
25 not limited to perjury and obstruction of justice, that is not

1 time-barred by the applicable statute of limitations on the  
2 date the agreement was signed; and that any prosecution,  
3 including prosecution that is subject to this agreement, may be  
4 premised upon any information provided or statements made by  
5 the defendant, and such information, statements, and leads  
6 derived therefrom may be used against the defendant to further  
7 waive any right to claim that the statements made before or  
8 after the date of the agreement should be excluded or  
9 suppressed under Federal Rule of Evidence 410, Federal Rule of  
10 Criminal Procedure 11(f), the sentencing guidelines, or any  
11 other provision of the constitution or federal law?

12 THE DEFENDANT: I understand.

13 THE COURT: Ms. Toebbe, does the written plea  
14 agreement represent the complete agreement between you and the  
15 government?

16 THE DEFENDANT: Yes.

17 THE COURT: Is there anything that you and the  
18 government have agreed to that is not contained in that written  
19 document?

20 THE DEFENDANT: No.

21 THE COURT: Ms. Toebbe, do you want me to accept the  
22 plea agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: I find that the defendant, Ms. Toebbe,  
25 understands and agrees with the terms contained in the plea

1 agreement. I order the original plea agreement be filed as  
2 part of the record in this case.

3 Mr. Beck, would you tender that to the clerk of the Court  
4 for me.

5 MR. BECK: Yes, Your Honor.

6 THE COURT: Ms. Toebbe, have you received a copy of  
7 the original indictment filed against you?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you had an opportunity to read that  
10 indictment?

11 THE DEFENDANT: Yes.

12 THE COURT: Would you like me to read the indictment  
13 to you or waive -- will you -- or will you waive reading of the  
14 indictment in open court?

15 THE DEFENDANT: I waive that.

16 THE COURT: All right. Thank you.

17 Now, you are pleading to Count 1 of the original indictment  
18 which charges you with conspiracy to communicate restricted  
19 data in violation of Title 42, United States Code, Section  
20 2274(a).

21 Ms. Toebbe, how do you plead to the charge contained in  
22 Count 1 of the original indictment?

23 THE DEFENDANT: Guilty.

24 THE COURT: Now, before I accept your plea, I want to  
25 make sure that there's a factual basis for your plea; that you

1 understand the nature of the charge against you and the  
2 consequences of pleading guilty to the charge; that you  
3 understand the constitutional and other legal rights you will  
4 give up by pleading guilty; and that you are pleading guilty  
5 voluntarily.

6 Ms. Toebbe, you are charged, again, in Count 1 with  
7 conspiracy to communicate restricted data in violation of Title  
8 42, United States Code, Section 2274(a). Now, Title 42, United  
9 States Code, Section 2274(a) states in its pertinent part as  
10 follows: "Whoever, lawfully or unlawfully, having possession  
11 of, access to, control over, or being entrusted with any  
12 document, writing, sketch, photograph, plan, model, instrument,  
13 appliance, note, or information involving or incorporating  
14 restricted data, communicates, transmits, or discloses the same  
15 to any individual or person, or attempts or conspires to do any  
16 of the foregoing, with the intent to injure the United States  
17 or with the intent to secure an advantage to any foreign  
18 nation, upon conviction thereof, shall be punished by  
19 imprisonment for life or by imprisonment for any term of years,  
20 or a fine of not more than \$100,000 or both."

21 The term "restricted data" as defined in Title 42, United  
22 States Code, Section 2014 means all data concerning design,  
23 manufacture, or utilization of atomic weapons; the production  
24 of special nuclear material; or the use of special nuclear  
25 material in the production of energy but shall not include data

1 declassified or removed from the restricted data category  
2 pursuant to Section 2162 of this title.

3 Do you understand the statute under which you've been  
4 charged?

5 THE DEFENDANT: I do.

6 THE COURT: Now, if the government had to go to trial  
7 in this case, the government would have to prove the following  
8 elements of Title 42, United States Code, Section 2274(a)  
9 against you beyond a reasonable doubt: First, that you or  
10 another person had possession of, access to, control over, or  
11 entrusted with the restricted data; second, that you or another  
12 person agreed to communicate, transmit, or disclose the  
13 restricted data to any individual or person with the intent to  
14 injure the United States or to secure an advantage to any  
15 foreign nation which agreement constitutes a conspiracy; third,  
16 that you knowingly and voluntarily participated in the  
17 conspiracy; and fourth, that an overt act was committed in  
18 furtherance of the conspiracy in the Northern District of  
19 West Virginia.

20 Ms. Toebbe, do you understand the elements of the statute  
21 under which you've been charged?

22 THE DEFENDANT: I do.

23 THE COURT: Now, Ms. Toebbe, considering those  
24 definitions, do you consider yourself to be guilty of violating  
25 Title 42, United States Code, Section 2274(a)?



1 THE DEFENDANT: I do.

2 THE COURT: Thank you.

3 Mr. Douglas, would you present your witness or proffer as  
4 to what the government would have been able to prove in this  
5 case.

6 MR. DOUGLAS: Yes, Your Honor.

7 Your Honor, the parties have agreed that the government in  
8 this instance will proceed by proffer, specifically proffering  
9 the factual stipulation the Court has gone over with the  
10 defendant. It's in paragraph 6 of the plea agreement. It says  
11 that at some time during the charged period, Ms. Toebbe  
12 knowingly and voluntarily joined a conspiracy with her husband,  
13 Jonathan Toebbe, to communicate restricted data to another  
14 person with the intent to secure an advantage to a foreign  
15 nation and that she committed multiple overt acts in  
16 furtherance of the conspiracy that paragraph 6 goes on to  
17 specify, but specifically she acted as a lookout during three  
18 dead drops that Mr. Toebbe serviced.

19 As the stipulation indicates in the plea agreement, at  
20 least two of those occurred during the charged period in  
21 Jefferson County, West Virginia, which is within the Northern  
22 District of West Virginia, specifically on June 26, 2021, and  
23 October 9, 2021. Otherwise, the Court -- or the government  
24 simply proffers the remaining paragraphs within paragraph 6 as  
25 the factual basis for the plea.

1 THE COURT: Thank you, Mr. Douglas.

2 Mr. Beck, Ms. Carmichael, do either of you have any  
3 objection to the proffer as made by the government which  
4 incorporates paragraph 6 of the plea agreement?

5 MR. BECK: We do not, Your Honor.

6 THE COURT: Ms. Toebe, do you have any objection to  
7 the government's proffer as made which also incorporates  
8 paragraph 6 of your plea agreement?

9 THE DEFENDANT: No.

10 THE COURT: Ms. Toebe, is the proffer by the  
11 government and the evidence that the government just presented  
12 both in verbal form and in paragraph 6 substantially correct?

13 THE DEFENDANT: Yes.

14 THE COURT: Did the government's proffer accurately  
15 reflect your involvement in what occurred?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Ms. Toebe, now I need you to  
18 explain to me what you did that makes you guilty of conspiracy  
19 to communicate restrictive data in violation of Title 42,  
20 United States Code, Section 2274(a).

21 THE DEFENDANT: During the time alleged in Count 1 of  
22 the indictment, I knowingly and voluntarily joined a conspiracy  
23 with my husband, Jonathan Toebe, to communicate restricted  
24 data to another person with the intent to secure an advantage  
25 to a foreign nation. And in furtherance of the conspiracy, I

1 acted as lookout for my husband when he serviced three dead  
2 drops, one of which occurred in Jefferson County,  
3 West Virginia, which is within the Northern District of  
4 West Virginia.

5 THE COURT: And these acts occurred on or about from  
6 April 1, 2020, through on or about October 9, 2021, at or near  
7 Jefferson County in the Northern District of West Virginia?

8 THE DEFENDANT: That's correct.

9 THE COURT: Again, Mr. Beck, Ms. Carmichael, are you  
10 satisfied that if this case went to trial, there would be no  
11 meritorious legal defense to the charge?

12 MR. BECK: We are, Your Honor.

13 THE COURT: And are you satisfied Ms. Toebbe's  
14 constitutional and other rights have been observed fully?

15 MR. BECK: Yes, Your Honor.

16 THE COURT: And do you concur in her now-stated  
17 intention to enter a plea of guilty to this charge?

18 MR. BECK: We do, Your Honor.

19 THE COURT: Ms. Toebbe, I find that there is a  
20 sufficient factual basis for your plea of guilty.

21 Now, Ms. Toebbe, do you understand that you are pleading  
22 guilty to a felony offense; and if your plea is accepted,  
23 you'll be adjudged guilty of that felony offense?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you also understand that such judgment

1 may deprive you of valuable civil rights such as your right to  
2 vote, your right to hold public office, your right to serve on  
3 a jury, and your right to possess a firearm or gun of any kind?

4 THE DEFENDANT: I do.

5 THE COURT: Have you discussed the statutory  
6 penalties that you will face as a result of this charge?

7 THE DEFENDANT: Yes.

8 THE COURT: Then you understand that you expose  
9 yourself to a maximum penalty of imprisonment for a term of not  
10 more than life; a fine of not more than \$100,000; and a term of  
11 supervised release of not more than 5 years?

12 THE DEFENDANT: I do.

13 THE COURT: Mr. Douglas, is there any mandatory  
14 minimum sentence that the defendant exposes herself to by  
15 pleading guilty to Count 1 of the original indictment?

16 MR. DOUGLAS: No, Your Honor.

17 THE COURT: All right. Thank you.

18 Now, Ms. Toebbe, do you understand that supervised release  
19 means that after imprisonment, you'll be supervised by the  
20 probation office under conditions that will be set by this  
21 Court?

22 THE DEFENDANT: I do.

23 THE COURT: Do you also understand that if you  
24 violate any of the terms of your supervised release, the Court  
25 may revoke the term of your supervised release and order you to

1 serve a term in prison?

2 THE DEFENDANT: I do.

3 THE COURT: Do you understand that you'll be required  
4 to pay a special assessment of \$100 for having been convicted  
5 of a felony offense?

6 THE DEFENDANT: Yes.

7 THE COURT: And you understand that you've agreed as  
8 a condition of your plea agreement to pay this special  
9 assessment before the date of sentencing?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that you could pay --  
12 be required to pay -- do you understand that as part of your  
13 fine, you could be required to pay the cost of incarceration  
14 and/or the cost of supervision upon release?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you discussed those costs with your  
17 counsel?

18 THE DEFENDANT: Yes.

19 THE COURT: Then you understand that it now costs  
20 \$3,688 per person per month for prison; \$371 per person per  
21 month for supervised release; and \$2,980 per month per person  
22 for a residential reentry center?

23 THE DEFENDANT: I do.

24 THE COURT: Do you understand that the Court has the  
25 authority to order restitution in your case?

1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand that the government  
3 may seek forfeiture in your case?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that the forfeiture of  
6 certain assets is part of the sentence that may be imposed in  
7 your case?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Do you understand that pursuant to the  
10 terms of paragraph 13 of your plea agreement, you've agreed to  
11 forfeit and abandon to the United States all of Ms. Toebbe's  
12 right, title, and interest in the following items that  
13 Ms. Toebbe agrees constitutes money, property, and/or assets  
14 derived from or obtained by Ms. Toebbe as a result of or used  
15 to facilitate the commission of Ms. Toebbe's illegal  
16 activities: All papers, digital media, electronic devices  
17 seized from her residence, her vehicles, and Mr. Toebbe's Naval  
18 Reactor's offices in October of 2021?

19 THE DEFENDANT: Yes.

20 THE COURT: In addition, do you understand that you  
21 agree to assist the federal officials in locating and  
22 retrieving the \$100,000 which the FBI paid to you via Monero  
23 cryptocurrency in exchange for the restricted data; in this  
24 regard, you voluntarily abandon all right, title, and interest  
25 and claim to the \$100,000?

1 THE DEFENDANT: Yes.

2 THE COURT: Ms. Toebe, do you understand that by  
3 pleading guilty, if you are not a citizen of the United States,  
4 you may be removed from the United States, denied citizenship,  
5 and denied admission to the United States in the future?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, do you understand that even though  
8 this is a binding plea, the sentencing guidelines may still  
9 play a role in your case because the Court can only accept a  
10 plea agreement containing a specific sentence if it determines  
11 that the sentence is appropriate under the United States  
12 Sentencing Guidelines?

13 THE DEFENDANT: I do.

14 THE COURT: Have you and your attorneys discussed the  
15 application of the U.S. Sentencing Guidelines to your case?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that the Court may  
18 defer deciding whether to accept the plea in your case until  
19 after the presentence report has been completed?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that both you and the  
22 government will have an opportunity to object to the  
23 presentence report?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that parole has been

1 abolished, and that if you are sentenced to prison, you will  
2 not be released on parole?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that in your plea  
5 agreement, you've waived your right to have any sentencing  
6 determinations made by a jury and for a jury to determine any  
7 and all facts relevant to the application of the guidelines in  
8 conformity with the Supreme Court case, *United States v.*  
9 *Booker*?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that you agreed  
12 for the United States district judge to determine any and all  
13 facts and to make a resolution of the application of any and  
14 all guideline factors?

15 THE DEFENDANT: I do.

16 THE COURT: Do you understand that you've agreed that  
17 the district judge should make any sentencing determinations,  
18 including, but not limited to, guideline determinations using  
19 the preponderance of the evidence standard?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, Ms. Toebbe, do you understand that  
22 in your plea agreement, you've agreed to give up your right to  
23 appeal your sentence under many circumstances, and that is  
24 provided that the Court sentence you pursuant to paragraph 3 of  
25 your plea agreement being the binding term?



1 THE DEFENDANT: Yes.

2 THE COURT: Ms. Toebbe, everyone found guilty of a  
3 crime in federal court in this district has the right to appeal  
4 their conviction and sentence to the Fourth Circuit Court of  
5 Appeals in Richmond, Virginia. In Richmond, a three-judge  
6 panel reviews the conviction and sentence to see if it was done  
7 correctly.

8 Do you understand that pursuant to the terms of paragraph  
9 17-A of your plea agreement that you have knowingly waived all  
10 right pursuant to Title 28, United States Code, Section 1291 or  
11 any other statute or constitutional provision to appeal your  
12 conviction on any ground whatsoever?

13 THE DEFENDANT: Yes.

14 THE COURT: This includes a waiver of your right to  
15 appeal your conviction on the ground that the statute to which  
16 you are pleading guilty is unconstitutional or on the ground  
17 that the admitted conduct does not fall within the scope of the  
18 statute.

19 THE DEFENDANT: I understand.

20 THE COURT: Do you understand that pursuant to  
21 paragraph 17-B of your plea agreement that you have knowingly  
22 and expressly waived all rights conferred by Title 18, United  
23 States Code, Section 3742 to appeal whatever sentence is  
24 imposed, including any fine, term of supervised release, or  
25 order of restitution for any reason, including the

1 establishment of the advisory sentencing guideline range, the  
2 determination of your criminal history, the weighing of the  
3 sentencing factors, and any constitutional challenges to the  
4 calculation and imposition of any term of imprisonment, fine,  
5 order of forfeiture, order of restitution, and term or  
6 condition of supervised release?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that you only have the  
9 right to appeal your guilty plea if you believe it was unlawful  
10 or involuntary or that there was some other fundamental defect  
11 in the proceeding that was not waived in the plea agreement  
12 itself?

13 THE DEFENDANT: I do.

14 THE COURT: However, you agree that your guilty plea  
15 today is lawful and voluntary and that there has been no  
16 fundamental defect in the proceedings that you're aware of; is  
17 that correct?

18 THE DEFENDANT: That's correct.

19 THE COURT: Do you also understand that everyone has  
20 the right to challenge their conviction or sentence or the  
21 manner in which it was determined in a post-conviction  
22 proceeding, sometimes called a habeas corpus petition or  
23 collateral attack, under Title 28, United States Code, Section  
24 2255?

25 THE DEFENDANT: Yes.

1           THE COURT: Do you understand that pursuant to the  
2 terms of paragraph 17-C of your plea agreement that you have  
3 waived your right to challenge the conviction or the sentence  
4 which is within the maximum provided in the statute of  
5 conviction or the manner in which it was determined in any  
6 post-conviction proceeding, including any proceeding under  
7 Title 28, United States Code, Section 2255?

8           THE DEFENDANT: Yes.

9           THE COURT: Do you understand that your only legal  
10 remedies on appeal or collateral attack are for claims of  
11 ineffective assistance of counsel or prosecutorial misconduct?

12          THE DEFENDANT: I do.

13          THE COURT: However, you agree that there is  
14 currently no known evidence of ineffective assistance of  
15 counsel or prosecutorial misconduct --

16          THE DEFENDANT: I do.

17          THE COURT: -- is that correct?

18          THE DEFENDANT: Correct.

19          THE COURT: Have you discussed the waiver of these  
20 important appellate rights with your attorneys?

21          THE DEFENDANT: Yes.

22          THE COURT: Having done so, do you still wish to  
23 waive these rights?

24          THE DEFENDANT: Yes.

25          THE COURT: Mr. Beck, Ms. Carmichael, do you believe

1 that the defendant fully understands the importance of the  
2 rights she is waiving?

3 MR. BECK: We do, Your Honor.

4 THE COURT: All right. Ms. Toebbe, do you understand  
5 that should you find some basis on which to file an appeal,  
6 with few exceptions, any notice of an appeal must be filed  
7 within 14 days of judgment being entered in your case?

8 THE DEFENDANT: I understand.

9 THE COURT: Based on your responses, Ms. Toebbe, I  
10 find that you understand the nature of the charge and the  
11 consequences of a guilty plea to the charge.

12 Now, Ms. Toebbe, do you understand that you have the right  
13 to continue to plead not guilty to the charge?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you also understand that by pleading  
16 guilty, you give up your right to a speedy and public trial by  
17 jury?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you also understand that by pleading  
20 guilty, you give up your right to force the government to come  
21 forward with witnesses and evidence against you?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that you would have  
24 been presumed innocent until the government presented enough  
25 evidence to satisfy both the judge and a jury beyond a

1 reasonable doubt of your guilt?

2 THE DEFENDANT: I do.

3 THE COURT: Do you understand that when you admit  
4 your guilt as you have here, you relieve the government of the  
5 burden of proving your guilt?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that you would have had  
8 the right to the assistance of counsel at trial?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that you and your  
11 attorneys, Ms. Carmichael and Mr. Beck, would have had the  
12 right to confront and cross examine your accusers and to test  
13 the truth of what they said?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that by pleading  
16 guilty, you give up that right?

17 THE DEFENDANT: I do.

18 THE COURT: Do you understand that had you desired to  
19 go to trial and wished to call witnesses that you would have  
20 been entitled to the services of the U.S. Marshal to bring  
21 witnesses to court under subpoena?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that by pleading  
24 guilty, you give up your right to call witnesses except at your  
25 sentencing hearing?

1 THE DEFENDANT: I do.

2 THE COURT: Do you understand that you would have had  
3 the right to go to trial and -- you understand that you would  
4 have had the right to move to suppress or keep away from the  
5 jury's hearing and consideration any evidence of any nature  
6 that had been illegally or unlawfully obtained?

7 THE DEFENDANT: I do.

8 THE COURT: Do you understand that had you desired to  
9 go to trial that you would have had the right to testify at  
10 trial?

11 THE DEFENDANT: Yes.

12 THE COURT: However, you understand that you could  
13 not have been compelled or forced to testify at trial?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you'd have had the  
16 right to go to trial and remain silent; that is, not take the  
17 witness stand or call any witnesses or present any evidence  
18 whatsoever on your own behalf?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that the Court would  
21 have instructed the jury that they could not convict you  
22 because you'd exercised your constitutional right to remain  
23 silent but could only base their decision on an offer of proof  
24 from the government?

25 THE DEFENDANT: Yes.

1           THE COURT: Do you understand that you give up your  
2 right to a unanimous verdict from a jury?

3           THE DEFENDANT: Yes.

4           THE COURT: Mr. Beck, Ms. Carmichael, do you believe  
5 that Ms. Toebbe understands the consequences of her guilty  
6 plea?

7           MR. BECK: We do, Your Honor.

8           THE COURT: Ms. Toebbe, I find that you understand  
9 the constitutional and other legal rights you are giving up by  
10 pleading guilty.

11          Now, Ms. Toebbe, knowing all of those things, do you still  
12 wish to plead guilty at this time?

13          THE DEFENDANT: Yes.

14          THE COURT: Has any person forced you, threatened  
15 you, coerced you, intimidated you, or talked you into entering  
16 a guilty plea against your will?

17          THE DEFENDANT: No.

18          THE COURT: Are you acting voluntarily and of your  
19 own free will in entering this guilty plea?

20          THE DEFENDANT: I am.

21          THE COURT: Ms. Toebbe, are you pleading guilty  
22 because you are guilty of the crime charged in Count 1 of the  
23 original indictment?

24          THE DEFENDANT: Yes.

25          THE COURT: Ms. Toebbe, has anyone promised you or

1 told you something that is different from what I've told you  
2 today to get you to plead guilty?

3 THE DEFENDANT: No.

4 THE COURT: Is the plea the result of any promises  
5 other than those promises specifically contained in your  
6 written plea agreement?

7 THE DEFENDANT: No.

8 THE COURT: Are you pleading guilty to protect  
9 anyone?

10 THE DEFENDANT: No.

11 THE COURT: Has anyone promised or predicted the  
12 exact sentence which will be imposed upon you in this matter?

13 THE DEFENDANT: No.

14 THE COURT: Then you understand that at this time, no  
15 one could know the exact sentence which will be imposed in your  
16 case?

17 THE DEFENDANT: I understand.

18 THE COURT: Ms. Toebbe, have you been able to fully  
19 understand what is going on in these proceedings today?

20 THE DEFENDANT: Yes.

21 THE COURT: Based on your responses, I find that your  
22 guilty plea is voluntary.

23 Now, again, at this time, Ms. Toebbe, do you have any  
24 questions or second thoughts about entering a plea of guilty to  
25 this charge?



1 THE DEFENDANT: I don't.

2 THE COURT: Would you please stand.

3 How do you plead to Count 1 of the original indictment  
4 charging you with conspiracy to communicate restricted data?

5 THE DEFENDANT: Guilty.

6 THE COURT: Thank you. Please be seated.

7 In the case of United States versus Diana Toebbe, I find  
8 that Ms. Toebbe is fully competent and capable of entering into  
9 an informed plea. I find that there is a sufficient factual  
10 basis for her plea of guilty. I find that Ms. Toebbe  
11 understands the nature of the charge and the consequences of a  
12 guilty plea to the charge. I find that Ms. Toebbe understands  
13 the constitutional and other legal rights she is giving up  
14 because of her plea, and I find that Ms. Toebbe's plea is  
15 voluntary.

16 While I defer accepting the terms of the plea agreement and  
17 adjudging the defendant guilty to the sentencing court, I do  
18 accept the plea of guilty to Count 1 of the original  
19 indictment.

20 Ms. Toebbe, the sentencing court must consider the  
21 following factors when determining the sentence that you will  
22 receive: The nature and circumstances of the offense; your  
23 history and characteristics; the necessity of punishing you,  
24 deterring you, protecting the public from you or providing you  
25 with training, medical care, or other treatment; the kinds of

1 sentences and sentencing range established by the sentencing  
2 guidelines; the need to give defendants with similar criminal  
3 records similar sentences; and the need to provide restitution  
4 to any victims of the offense.

5 In order to help the Court consider these factors, the  
6 probation office is required to conduct a presentence  
7 investigation of you and submit a report to the sentencing  
8 court. The information in this report might have an impact on  
9 the sentence you ultimately receive. I strongly encourage you  
10 to discuss this process and your participation in the same with  
11 your attorneys.

12 Ms. Toebbe, understand that you must not commit any crimes  
13 between now and sentencing because there are additional  
14 punishments that may be imposed for committing additional  
15 crimes. Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: Pursuant to Section 6A1 of the United  
18 States Sentencing Guidelines, I order the probation office to  
19 conduct a presentence investigation of Ms. Toebbe, prepare a  
20 draft presentence investigation report, and disclose its  
21 contents to the government and Ms. Toebbe. I further direct  
22 the probation officer and all parties comply with Federal Rule  
23 of Criminal Procedure 32 and U.S. Sentencing Guideline Section  
24 6A1.2 regarding deadlines for disclosure, objection, departure  
25 motion, or sentencing statement and requirements. The

1 sentencing court will set this matter for sentencing following  
2 the receipt of the presentence report.

3 Counsel, if either of you or if any of you anticipate a  
4 lengthy sentencing hearing, please notify the Court in advance  
5 so that an adequate amount of time can be set aside for that  
6 hearing. Judge Groh normally sets hearings for approximately  
7 45 minutes so if you anticipate a longer hearing, please file  
8 an appropriate motion.

9 MR. DOUGLAS: Thank you, Your Honor.

10 MR. BECK: Understood, Your Honor.

11 THE COURT: All right, Counsel, anything further we  
12 need to address before we adjourn this morning?

13 MR. DOUGLAS: Not by the government, Your Honor.

14 MR. BECK: Not for Mrs. Toebbe, Your Honor.

15 THE COURT: All right. With that in mind, the  
16 defendant is remanded to the custody of the U.S. Marshals  
17 Service, and we stand adjourned. Thank you.

18

19 (Hearing concluded at 9:45 A.M.)

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CERTIFICATE

I, Kate A. Slayden, Registered Professional Reporter and Official Court Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript to the best of my ability of the digitally-recorded proceedings had in the above-styled action on September 27, 2022, as transcribed by me.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Given under my hand this 6th day of December 2022.

/s/Kate A. Slayden

Kate A. Slayden, RPR, CCR  
Official Reporter, United States  
District Court for the Northern  
District of West Virginia